

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA**

FARMERS EDGE INC., FARMER EDGE  
(US) INC., and FARMERS EDGE (US)  
LLC,

Plaintiffs/Counterclaim  
Defendants,

v.

FARMOBILE LLC, JASON G. TATGE,  
HEATH GARRET GERLOCK, and  
RANDALL THOMAS NUSS,

Defendants/Counterclaim  
Plaintiffs.

CLARKE GERLOCK,

Third-Party Intervenor  
Plaintiff,

v.

FARMERS EDGE INC., FARMER EDGE  
(US) INC., and FARMERS EDGE (US)  
LLC,

Third-Party Defendants.

CASE NO. 8:16-CV-00191-JFB-SMB

**MOTION TO HOLD FARMOBILE  
LLC AND ITS COUNSEL IN  
CONTEMPT OF COURT FOR  
VIOLATION OF THE PROTECTIVE  
ORDER; FOR ADDITIONAL RELIEF  
TO PREVENT ONGOING  
VIOLATIONS OF THE PROTECTIVE  
ORDER; FOR DISCOVERY  
RELATING TO THE VIOLATIONS  
OF THE PROTECTIVE ORDER; AND  
FOR A HEARING ON AN  
EXPEDITED BASIS**

Farmobile LLC (“Farmobile”) and its counsel have violated the Stipulated Protective Order (Filing No. 77) by having its outside litigation counsel, Joan Archer, fish for information in discovery regarding Farmers Edge’s operations, plans, and technology designated CONFIDENTIAL – ATTORNEYS’ EYES ONLY and CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY regarding events that occurred long after the individual Defendants left Crop Ventures, and then, after Ms. Archer was armed with that information that she was only able to obtain because she was outside counsel, having Ms. Archer leave the Husch

Blackwell firm to become an employee of Farmobile serving as its in-house General Counsel. They did so without any prior notice to the Court or to the Plaintiffs/Counterclaim Defendants/Third-Party Defendants (hereinafter “Plaintiffs”). Plaintiffs therefore move to have the Court hold Farmobile and its counsel in contempt for that violation of the Stipulated Protective Order, and to have the Court prevent ongoing violations of the Stipulated Protective Order. Plaintiffs further seek to have the Court authorize discovery regarding the violations of the Protective Order, and to set a hearing on an expedited basis.

In support of their Motion, Plaintiffs state as follows:

1. Farmobile engaged in widespread discovery regarding events that occurred long after the individual Defendants left Crop Ventures. That discovery included Farmers Edge’s operations, plans, finances, and technology that were designated CONFIDENTIAL - ATTORNEYS’ EYES ONLY and CONFIDENTIAL SOURCE CODE - ATTORNEYS’ EYES ONLY under the Stipulated Protective Order.

2. Ms. Archer knows and possesses information from Farmers Edge designated CONFIDENTIAL - ATTORNEYS EYES ONLY and CONFIDENTIAL SOURCE CODE - ATTORNEYS’ EYES ONLY obtained during discovery that, under the Stipulated Protective Order, should not be possessed by any employee of Farmobile, particularly someone serving as its General Counsel.

3. Rather, under the Stipulated Protective Order, that CONFIDENTIAL - ATTORNEYS’ EYES ONLY and CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information only should be disclosed to or possessed by, in pertinent part, “*outside counsel.*” (Filing No. 77 ¶ 7(a) & 8(b)(c)(i)) (emphasis added).

4. The Stipulated Protective Order also has a patent prosecution bar that prevents even outside counsel who obtained access to CONFIDENTIAL - ATTORNEYS' EYES ONLY or CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY information from preparing, counseling, or assisting with the preparation, filing, or prosecution of any new patent application “in the same field as automated systems and methods for capturing farming operation data in real time using CANbus data collection devices to process, share, and foster analysis of agronomic data as disclosed in the material designated ‘CONFIDENTIAL-ATTORNEYS’ EYES ONLY,’ or ‘CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY’” for a period extending for one year following termination of this lawsuit. (Filing No. 77 ¶ 23).

5. In violation of the Stipulated Protective Order, Farmobile LLC has hired Joan Archer as an employee of Farmobile to serve as its in-house General Counsel.

6. Farmobile did so without prior notice to the Court or to Plaintiffs, and without seeking any modification of the Stipulated Protective Order.

7. Counsel for Plaintiffs spoke with outside counsel for Farmobile, Marnie Jensen, about the confidentiality issue last Wednesday, March 14th, and called her phone as agreed last Friday, March 16th, leaving a voice message when there was no answer. Ms. Jensen had indicated that she was going to provide a summary of points relating to the confidentiality issues last Thursday and then over the weekend. (*See Brookhouser Decl. Ex. 1*). No summary was provided until the morning of March 20th, when she indicated that she was not providing any analysis regarding the Protective Order and did not believe that one was necessary. (*Brookhouser Decl. Ex. 2*). Instead, her email primarily provided reasons that Farmobile did not believe information would be considered protected in the future and ways in which Farmobile reportedly was going to

prevent information from coming into the possession of Farmobile employees other than Ms. Archer. (*Id.*).

8. Farmobile should be found in contempt of Court for violation of the Stipulated Protective Order.

9. It is proper to permit Plaintiffs to conduct discovery regarding the violation of the Stipulated Protective Order, as set forth more fully in the Brief in support of this Motion.

10. Under NECivLR 7.1(d), Plaintiffs respectfully request a hearing to permit oral argument. Plaintiffs estimate that a hearing could be completed in half an hour.

Wherefore, Plaintiffs respectfully request that the Court grant the relief sought in this Motion and award such further relief as the Court concludes is proper.

Respectfully Submitted,

Dated this 22nd day of March, 2018.

Attorneys for Plaintiffs FARMERS EDGE  
INC., FARMERS EDGE (US) INC. and  
FARMERS EDGE (US) LLC

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of March, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which should send a copy by electronic mail to all counsel of record.

s/Patrick E. Brookhouser, Jr.  
Patrick E. Brookhouser, Jr.